

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN AUBYN A. CURTISS**, on February 17,
2001 at 12:00 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: Rep. Dee Brown (R)
Rep. Roy Brown (R)

Members Absent: None.

Staff Present: Stacey Leitgeb, Committee Secretary
Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 605, 2/14/2001; HB 606,
2/14/2001; HB 579, 2/14/2001
Executive Action: HB 107; HB 467; HJ 19; HJ 20;
HJ 22; HJ 26; HB 579; HB 606;
HB 605; HB 407; HB 467

EXECUTIVE ACTION ON HB 107

Motion/Vote: REP. STORY moved TO BRING HB 107 OFF THE TABLE.
Motion carried unanimously.

Motion/Vote: REP. OLSON moved 107 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 467

Motion/Vote: REP. STORY moved HB 467 BE TABLED. Motion carried 7-4 with Dell, Forrester, Juneau, and Schmidt voting no.

EXECUTIVE ACTION ON HJ 19

Motion: REP. MOOD moved HJ 19 BE ADOPTED.

Motion: REP. MATTHEWS moved AMENDMENTS BE ADOPTED.

Discussion:

REP. MATTHEWS said this resolution was important, but he felt it would be better to make it less political.

REP. CURTISS considered it to be a friendly amendment.

REP. MOOD clarified this would strike out the reference to former presidents. REP. MATTHEWS said it also strikes out recreation and mining because there isn't much affected by this in those areas.

REP. MOOD said that there was an estimate done by the US Forest Service stating on federal forest service land, on any one given day, there are 14,000 timber-related vehicles and there are about 1.5 million recreational vehicles. The fact was the roads were built for the timber program, but they were used extensively by recreationists. He would like to segregate that amendment.

Substitute Motion/Vote: REP. SCHMIDT moved TO SEGREGATE NUMBERS 1, 2, 3, 4, 6 OF THE AMENDMENT. Motion carried unanimously.

REP. SCHMIDT said she had heard during the testimony there was concern about timber harvesting. Based on the testimony, she thought the amendment improved the resolution.

Substitute Motion/Vote: REP. MATTHEWS moved AMENDMENT NUMBERS 1, 2, 3, 4, 6 BE ADOPTED. Motion carried unanimously.

REP. STORY agreed they should not adopt amendment number 5.

REP. CURTISS said there was testimony on that issue. One of the major environmental inventories that was done by the US Forest

Service indicated that 82% of tourism was driving for pleasure. If we make all these roads inaccessible, it would be a disservice to the public.

REP. SCHMIDT felt comfortable with the testimony that this will not be curtailed. It said, "Will not affect mining or recreation." She doesn't understand why people would oppose taking those two words out.

REP. MOOD thought if this designation continued to go through to completion, they would never see any kind of activity other than backpacking and bird watching take place in these areas.

REP. SCHMIDT didn't have an emotional interest in this and was trying to be objective.

REP. MCKENNEY disagreed and said what affects one part of the state affects all the citizens of Montana. He supported this resolution whether or not his district has wilderness areas.

REP. FORRESTER agreed with **REP. MCKENNEY**. He said this addressed the impacts of all people who liked to recreate on national forest lands.

Motion/Vote: **REP. SCHMIDT** moved **AMENDMENT NUMBER 5 BE ADOPTED**. Motion failed 3-7 with Dell, Juneau, and Schmidt voting aye.

Motion/Vote: **REP. MATTHEWS** moved **HJ 19 BE ADOPTED AS AMENDED**. Motion carried 7-3 with Dell, Juneau, and Schmidt voting no.

EXECUTIVE ACTION ON HJ 20

Motion: **REP. MATTHEWS** moved **HJ 20 BE ADOPTED**.

Discussion:

REP. FORRESTER explained the process.

REP. STORY was concerned about lines 18 and 19. He felt it tended to be true, but inflammatory.

Substitute Motion/Vote: **REP. STORY** moved an **AMENDMENT TO STRIKE LINES 18 AND 19 BE ADOPTED**. Motion carried unanimously.

Motion/Vote: **REP. DELL** moved **HJ 20 BE ADOPTED AS AMENDED**. Motion carried 9-1 with Juneau voting no.

EXECUTIVE ACTION ON HJ 22

Motion/Vote: REP. DELL moved HJ 22 BE ADOPTED. Motion carried unanimously.

EXECUTIVE ACTION ON HJ 26

Motion: REP. MOOD moved HJ 26 BE ADOPTED.

Discussion:

REP. FORRESTER said this would send a message that currently they would be conducting foreign policy on a state level. He felt it was a bad policy.

REP. MOOD thought there may be some basis for what they were presenting, but he had yet to be entirely convinced.

REP. CURTISS supported this because she had problems with some of the treaties that were coming out of the UN relative to bio-diversity. These treaties were binding on every last one of us.

Vote: Motion failed 1-10 with Rep. Curtiss voting aye.

Vote: By committee consensus the vote was reversed to table.

HEARING ON HB 606

Sponsor: REP. DIANE RICE, HD 33, Harrison

Proponents: REP. BOB DAVIES, HD 27, Bozeman
Casey Emerson, former Senator

Opponents: Al Smith, Montana Trial Lawyers Association

Opening Statement by Sponsor:

REP. DIANE RICE, HD 33, Harrison, said this bill involved nullification of unconstitutional federal law, presidential decrees, executive orders, and treaties. Most importantly was the check the states should have on the federal government. The states themselves delegated limited powers to the federal government and formed a limited power federal government. She said there was no actual method for the states to check and hold in balance the powers of the federal government. She presented a

handout of southern history **EXHIBIT(feh40a01)** and nullification **EXHIBIT(feh40a02)**.

Proponents' Testimony:

REP. BOB DAVIES, HD 27, said this had long been a concern for him. He read from a quote by Alexander Hamilton. He stated this was the danger of not keeping the various parts of our governmental system in their proper place. This potential problem was well recognized by the founders. The constitution was a contract between the states and the central government they were in the process of creating. The central government has become a consolidated government and the separation of powers has been violated and states' rights have been trampled upon. Democracy is not an ideal to be reached for, it is the means by which people can be swayed to cooperate in their own destruction.

Casey Emerson, former Senator, explained when the states first organized the Confederation they had a constitution and they made that constitution very strong as far as the states were concerned and very weak as far as the federal government because they had been trampled upon over in Europe by the strong central governments. They made it so strong for the states that the federal government couldn't do the job that the states expected them to do. A few years later, they reorganized and drew up our present constitution, in which the federal government got a little stronger, but the states were still supposed to be the strong ones. That fits in with what this bill is all about. Now we have states where the federal government owns most of the land. The federal government has gotten much stronger than was ever dreamed.

Opponents' Testimony:

Al Smith, Montana Trial Lawyers Association, disagreed there was no mechanism for the states to check federal power. There was and it was called the US Supreme Court. Every year the Supreme Court takes on decisions where a state challenges the federal government's authority to exert power over the state. An example was the Garrett case, he explained what it dealt with. He said it would be the US Supreme Court who would do the balancing act. Under this bill it looked like the legislature could decide to abrogate the treaties that we have with Indians in this state.

Questions from Committee Members and Responses:

{Tape 1; Side B}

REP. TOM DELL asked if there were other states that had put this in statute. **REP. RICE** said the handout showed the other states. No other states had put this into statute though.

REP. DELL was curious about the mechanism. He asked if this would be considered a hostile act by the federal government. **REP. RICE** said they would draw up a bill and give notice to the government through delegation.

REP. BOB STORY asked if one of the first attempts at nullification was the Whiskey Rebellion. **REP. DAVIES** answered yes.

REP. STORY asked for examples of types of laws the legislature might deem unconstitutional and declare null and void in the state of Montana. **REP. DAVIES** said there were many laws. The Disability Act was referred to be one example.

REP. STORY said this bill would be as broad as the legislature wanted to use it. He asked about the concerns for the borders, whether with Canada or with other states. **REP. DAVIES** thought the constitution spoke pretty clearly about the states. One of the prohibitions in the constitution was that one state can't be divided into two, unless the state legislatures are in approval.

REP. CAROL JUNEAU referred to a handout mentioning treaties with federally recognized Indian tribes and she asked if this would be an amendment. **REP. RICE** said it was already an amendment.

REP. JUNEAU agreed with the opponents testimony. She said perhaps it may be something they would want to leave in the bill. **REP. RICE** said her intent was to address the new treaties coming from the UN.

Closing by Sponsor:

REP. RICE gave a background of history and stated last year, the federal government was chastised for being far over the line to the point where they are going to need a sub court under the Supreme Court to deal with all of the abuses that congress is imposing on the states. The intent was not to have to go through a costly challenge clear to the Supreme Court. This was a checks and balances process to check the federal government from usurping the states rights. A law that isn't constitutional is not a law.

HEARING ON HB 605

Sponsor: REP. DOUG MOOD, HD 58, Seeley Lake

Proponents: None

Opponents: Linda Stahl, Montana Local Health Officers Group

Opening Statement by Sponsor:

REP. DOUG MOOD, HD 58, Seeley Lake, said this bill was brought forth because of a group of individuals who were within the area that was governed by the city of Missoula. There were local air pollution standards that the city was attempting to put in place by rule and those rules were written without adequate input or public information. They were asking for a mechanism providing for public notice and input when a local entity is attempting to put in air pollution control programs that are more stringent than what they can expect from the state. Under the local and state air quality regulations, there currently is a mechanism which does exactly that. There was a change in this adding a time limit of six months for the board to have its public meetings.

Proponents: None

Opponents' Testimony:

Linda Stahl, Montana Local Health Officers Group, submitted a written testimony EXHIBIT(feh40a03). She handed out information pertaining to the bill EXHIBIT(feh40a04).

Questions from Committee Members and Responses:

REP. BOB STORY asked if this bill was to fix a local problem.

REP. MOOD thought the individuals who were involved in the Missoula situation felt quite slighted the rules were being imposed without any input from them at all. He would hope this would fix that problem.

REP. STORY asked if this bill put local governments under something similar to the Administrative Procedures Act. REP. MOOD said the language was similar.

REP. STORY asked what would be wrong with requiring local governments to comply with the Administrative Procedures Act. Ms. Stahl said it was a larger policy question. Some of the language in the act was already very similar in terms of how

counties have to conduct their business. There was also the Accountability Act that they were conforming to. This could be confusing.

REP. STORY asked what specifically was confusing. **Ms. Stahl** said that they would have to look at two different sections of the law.

Closing by Sponsor:

REP. MOOD hoped the bill would pass the committee at this point. There were people who were affected very dramatically by these rules and regulations. It was only reasonable to have them have input into how these regulations are established from the beginning. There were people making these regulations who have absolutely no vested interest in their implementation.

HEARING ON HB 579

Sponsor: **REP. CAROL JUNEAU, HD 85, Browning**

Proponents: **Lynn Long, Unemployment Insurance Division**

Opponents: **None**

Opening Statement by Sponsor:

REP. CAROL JUNEAU, HD 85, Browning, brought this bill forward on behalf of the Department of Labor. The purpose of the bill was to modify the current unemployment insurance laws to reflect Montana's laws conformed to recent changes in federal law related to unemployment taxes. The new law required the states to provide unemployment insurance coverage for employment by federally recognized Indian tribes and wholly-owned subsidiaries of those tribes. The tribes would have a choice to pay unemployment taxes to fund their share of the unemployment insurance system or to provide reimbursement to the state for benefits already paid out in claims that are related to the employment of that tribe. She explained the tribes would have available to them the same funding option that currently exists for other governmental agencies, entities and non-profits. The bill made some technical changes in reference to employment by Indian tribes and wholly-owned subsidiaries of the tribes. The bill provided in the event the tribe was delinquent in paying those costs for over 90 days, the tribe and all its subsidiaries would be removed from the state unemployment insurance. This was going to allow the tribal governments the opportunity to provide

unemployment insurance coverage for tribal employees in a way that is more like how other governmental entities pay for unemployment insurance coverage.

Proponents' Testimony:

Lynn Long, Unemployment Insurance Division, said this bill offered the tribes some options about how to pay, which may in fact save the tribes money. She added they do need to be in conformance with federal law.

Opponents: None

Questions from Committee Members and Responses:

REP. BOB STORY asked for further explanation on subsection two. **Ms. Long** said the federal government had an extended benefits program for unemployment insurance whereby if certain triggers are met on a federal level, then people who have been on unemployment insurance may get benefits for a longer period of time.

REP. STORY asked for further clarification. **Ms. Long** explained if the tribe choose to be a reimbursable employer, which meant they would pay back the benefits that were paid out, then half of the extended benefits would come from the federal government and half would come from the tribe. The tribe would have two options to be a cost-reimbursable employer and to continue to pay in on an experience basis.

Closing by Sponsor:

REP. JUNEAU thanked the committee for a great hearing.

EXECUTIVE ACTION ON HB 579

Motion/Vote: **REP. JUNEAU** moved HB 579 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 606

Motion: **REP. DELL** moved HB 606 DO PASS.

Discussion:

REP. DELL agreed with the philosophy there was need to protect the rights. However, he thought the Supreme Court had been becoming much more activist in terms of protecting state rights.

Vote: Motion failed 1-9 with Rep. Curtiss voting aye.

Vote: By committee consensus the vote was reversed to table HB 606.

EXECUTIVE ACTION ON HB 605

Motion: REP. MOOD moved HB 605 DO PASS.

Discussion:

REP. CURTISS commented the board of Missoula county had not been abiding by the administrative procedures rules.

REP. MOOD said that appeared to be the case. When they had the public hearing, the rules were completely written and none of the industrial people who were affected by the rules had any opportunity prior to that hearing to offer input.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 407

Motion: REP. STORY moved HB 407 DO PASS.

Discussion:

REP. STORY said during the hearing he had asked MPC if Northwest intended to do the same type of service in Montana. If they were, then it would be apparent that if you can provide this service without increasing staff, then they were over-staffed to begin with. Northwest responded they had a separate company that did that type of work.

REP. OLSON was irritated by parts of this bill. He received over 200 pieces of correspondence on the issue. He understands the contractors' concern, but he didn't believe utilities should be doing this kind of work subsidized under the utility side of their business.

REP. SCHMIDT said this would be an unfair advantage as had been seen in other markets. She was sympathetic to those retailers who are trying to compete with the utility.

REP. MATTHEWS said the people of eastern Montana really enjoy this service of MDU. There were a lot of people who need this service.

REP. MOOD thought it was a natural expectation of people in certain services, they were going to call the utility company and ask them to come out for them. He felt this bill created a major problem.

REP. DELL said the people who testified had a legitimate concern. He thought the PSC doesn't have the ability to police this.

REP. STORY was concerned on both sides of this issue. It was a benefit for them to have that access other companies didn't have. These other companies could do the same thing and sell service contracts.

Vote: Motion failed 2-9 with Rep. Dell and Rep. Schmidt voting aye.

Vote: By committee consensus the vote was reversed to table HB 407.

EXECUTIVE ACTION ON HB 579

Motion/Vote: REP. JUNEAU moved TO PUT HB 579 ON THE CONSENT CALENDAR. Motion carried unanimously.

EXECUTIVE ACTION ON HB 467

Motion/Vote: REP. SCHMIDT moved TO BRING HB 467 OFF THE TABLE. Motion carried unanimously.

Greg Groepper, Energy Share, said the first set of amendments corrected some errors in the original drafting of the bill.

Motion: REP. SCHMIDT moved AMENDMENT 46701 BE ADOPTED.

Discussion:

REP. STORY asked if there was a change in this amendment from what was in the present statute. **Mr. Groepper** said the present statute lumped together preservation, renewable and low income. This bill only addressed low income. This bill singles out low

income USB rate to be continued and to pay at the .41% rate. That was the same percentage that was required by law for the electric USB rate for low income.

REP. STORY asked if the large industrials were required to put any of their money toward low income. **Mr. Groepper** said they weren't required to do anything except pay the 2.4%. Then they could get credits back against their power bill for that 2.4% if they make certain qualifying expenditures.

REP. STORY said the reason they were still allowing them to direct some low income was because once all those other options were taken away, the money would just go into the pool and go for low income. **Mr. Groepper** agreed.

REP. MATTHEWS asked how much more or less was expected to be raised as the price goes up. **Mr. Groepper** said if nothing was done with the bills to extend the USB rates then this bill would be decreased.

Vote: Motion carried unanimously.

Motion: REP. SCHMIDT moved 46701.ASM BE ADOPTED.

Discussion:

Mr. Groepper said this was to address the concerns of the PSC. This amendment stated the PSC should look at distribution, transmission and supply costs.

REP. STORY didn't think this language addressed the concerns. He said the language would work if it only considered the distribution costs. He added if there was a default supplier, they would end up double charging the energy.

Vote: Motion failed 3-8 with Rep. Forrester, Rep. Juneau, and Rep. Schmidt voting aye.

Motion: REP. SCHMIDT moved HB 467 DO PASS AS AMENDED.

Discussion:

REP. MOOD asked for further explanation. **REP. STORY** said it was his recollection that .41 is 17% times 2.4. It just simplified the calculation.

REP. MOOD said if this bill passed it meant the USB had no outer limit on it. **REP. STORY** said that was his understanding.

REP. MATTHEWS said they didn't have the USB charge in the MDU area. He liked it was for low income, but eliminating the sunset provision was a mistake. The reality was it didn't sunset until 2003. He would like to wait until that time to decide if the sunset was going to go away.

REP. SCHMIDT commented what they were doing with natural gas was what they were trying to do with **REP. WANZENRIED'S** bill. She said it was trying to help these people, who weren't paying their bills, they were going to be asking the rates to increase to cover those costs that they lost.

Vote: Motion failed 4-7 with Rep. Dell, Rep. Forrester, Rep. Juneau, and Rep. Schmidt voting aye.

Vote: By committee consensus the vote was reversed to table HB 467.

EXECUTIVE ACTION ON HB 567

Motion: REP. MOOD moved HB 567 DO PASS.

Motion: REP. FORRESTER moved AMENDMENTS TO HB 567 BE ADOPTED.

Discussion:

Bill Squires, Black Foot Telephone Company, explained the amendments.

REP. STORY said the main amendment would still have the language that the rates must be reasonable and not subject to review. **Mr. Squires** agreed.

REP. STORY asked about amendment number 5. He wondered if the exchange carrier would still have to compensate the local. **Mr. Squires** said yes, there were some long distance carriers that were not compensating local exchange carriers.

REP. JUNEAU asked if the amendments were in agreement with the sponsor. **REP. FORRESTER** said yes.

Vote: Motion carried unanimously.

Motion/Vote: REP. MOOD moved HB 567 DO PASS AS AMENDED. Motion carried 10-1 with Rep. McKenney voting no.

ADJOURNMENT

Adjournment: 5:20 P.M.

REP. AUBYN A. CURTISS, Chairman

ROBYN LUND, Secretary

AC/RL

EXHIBIT (feh40aad)